

Docket No. F-9052

Ser. No. 10/576,351

**REMARKS**

Claims 1 and 32-69 are pending; and of these, claims 1, 38, 42-45, 48, 53, 58 and 62-64 have been amended, and claims 34-37, 39-40, 46-47, 58, 61 and 66-67 have been canceled. Claims 70-72 are new; thus, claims 1, 32-33, 38, 41-45, 48-60, 62-65, 68-69 and 70-72 are presented for examination; reconsideration of the instant application is respectfully requested.

The Examiner has rejected the pending claims, including Applicant's independent claims 1 and 53, under Section 103 as being obvious over the prior art of record as noted at pages 2-12 of the Office Action, and in view of newly cited Frei et al. (US 2003/0078581) ("Frei"). With respect to Applicant's claims, as amended, the Examiner's rejections are respectfully traversed.

As shown hereinabove, Applicant has amended each of independent claims 1 and 53 to relate that the recited second connecting section and shaft portion of the recited fixation element each comprise multiple sets of alternating straightened and curvilinear portions comprising the recited catch portions, that the second connecting section defines a closed end portion, that the first connecting section includes fastening structure including a nose on the guide element which engages against a stop of the osteosynthetic plate, and that a bone splinter fixation element is also provided.

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Other ones of Applicant's claims have been amended commensurate with the above amendments and/or to more particularly recite the invention provided therein.

The Examiner has asserted that Frei teaches Applicant's claimed non-rigid connection.

In this respect, Applicant respectfully submits that Frei fails to teach or suggest Applicant's construction to permit Applicant's non-rigid connection as enabled by Applicant's second connecting section and fixation element each including Applicant's recited catch surfaces to include the configuration thereof as recited hereinabove.

Instead, the portion of Frei cited by the Examiner merely addresses the use of toothed as its discussed anti-rotation means 50 with respect to its FIG. 3. Frei's alternative embodiment as shown in its FIGS. 4 -5 and its additional embodiment as discussed at its paragraph [0021] add nothing with respect to Applicant's construction as now claimed.

In particular, Frei fails to teach or suggest Applicant's recited seat as provided by Applicant's recited catch surfaces and including the recited closed end portion thereof so that, in cooperating with Applicant's recited catch surfaces positioned on the shaft portion of Applicant's fixation element, such fixation element is enabled to move axially, as recited, without tilting.

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Additionally, Applicant has amended each of claims 1 and 53 to recite therein Applicant's fastening structure to relate that such structure includes a nose carried on the first section of Applicant's guide element; that the nose is cooperable with Applicant's recited groove and stop to limit rotational movement of the guide element.

The Examiner has asserted Lower with respect to the above. However, Lower fails to teach or suggest the relative positioning of Applicant's recited groove and stop of Applicant's recited osteosynthetic plate such that the groove and stop are cooperable with the recited nose carried by Applicant's guide element, and its relative positioning, to limit rotational movement of the guide element.

The Examiner has asserted Nelson with respect to Applicant's recited bone splinter fixation element. Nowhere, however, is there any teaching or suggestion of such fixation element comprising a feature of Applicant's construction as now recited in Applicant's claims, as amended.

With respect to Frei, Applicant notes that there is no teaching or suggestion of Applicant's catch surfaces, in combination with others of such features of Applicant's invention as now recited in Applicant's claims, as amended, so as to allow placement of the fixation element into a fractured bone segment, while at the same time allowing use of Applicant's guide element to perform such placement. See Applicant's specification at page 18, and also at

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page 25 which explains that the fixation element 2 can be screwed into a dislodged bone fragment through use of the guide element 4.

In contrast, Frei's construction to include its arrangements as discussed at its paragraphs [0019]-[0021] fails to teach or suggest any such construction relative to that which is recited in Applicant's claims, as amended.

Applicant's new claims 70-72 address various features of Applicant's claims presented herein (absent, for example, the hereinabove recited catch surfaces), together with Applicant's guide element being freely rotatable with respect to Applicant's fixation element so as to enable relative rotation of Applicant's guide element to, for example, adjust positioning of the guide element and its included bore in order to adjustably receive Applicant's recited bone splinter fixation element. See Applicant's specification at page 21, line 16 - page 22, line 3.

It is not believed that Gotfried, Frei, Nelson, Lower and Lee et al., either when taken alone or in combination, either teach or suggest Applicant's construction as recited.

Applicant respectfully submits that Applicant's claims, as amended, and Applicant's new claims patentably distinguish over Gotfried, Frei, Nelson, Lower, and Lee et al., either when taken alone or in combination.

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As shown hereinabove, Applicant has amended the indicated portion of the specification to provide the noted clarification(s).

Applicant respectfully requests a two month extension of time for responding to the Office Action. The fee of \$490.00 for the extension is provided for in the charge authorization presented in the PTO Form 2038, Credit Card Payment form, provided herewith.

If there is any discrepancy between the fee(s) due and the fee payment authorized in the Credit Card Payment Form PTO-2038 or the Form PTO-2038 is missing or fee payment via the Form PTO-2038 cannot be processed, the USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

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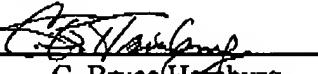
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In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,

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